



## PLANNING COMMISSION STAFF REPORT JULY 27, 2006

<b>Project:</b>	CONDOMINIUM CONVERSION ORDINANCE - (PLN2005-00312)
<b>Proposal:</b>	To consider a zoning text amendment deleting Fremont Municipal Code (FMC) Sec. 8-22135.05 and revising FMC Sec. 8-22135 (Condominium Conversion Ordinance) and Article 21.7 (Inclusionary Housing Ordinance) applying regulations for renter protection and displacement and site and building upgrades during a condominium conversion project.
<b>Recommendation:</b>	Recommend approval to the City Council
<b>Location:</b>	Citywide
<b>Area:</b>	Citywide
<b>People:</b>	Jeff Schwob, Planning Director (510) 494-4527 <a href="mailto:jschwob@ci.fremont.ca.us">jschwob@ci.fremont.ca.us</a>
<b>Environmental Review:</b>	A Negative Declaration has been prepared and circulated for this project.
<b>General Plan:</b>	Residential and Commercial (mixed use) land use designations
<b>Zoning:</b>	Residential and Commercial (mixed use) zoning designations

### **EXECUTIVE SUMMARY:**

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This report summarizes a proposal to amend the City's Residential Condominium Conversion and Inclusionary Housing Ordinances to provide for greater tenant protection and relocation assistance, inclusionary (below market rate) housing, and site and building upgrades during a condominium conversion project. The proposal also provides clarified conversion requirements and evaluation standards. The Community Development Department is recommending that the Planning Commission recommend approval of the proposed ordinance amendments to City Council.

### **BACKGROUND AND PREVIOUS ACTIONS:**

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The City's Condominium Conversion Ordinance was last substantively updated in 1993. On November 11, 2005, in response to an increasing number of requests related to conversions, the City Council held a work session to consider issues related to condominium conversions. City staff presented background information and suggestions for revisions to the City's Condominium Conversion Ordinance. City Council concurred that the ordinance was due for reconsideration and provided general direction to staff to include provisions for an inclusionary housing requirement, greater tenant protection and site and building upgrades. Consistent therewith, the City Council adopted Resolution No. 2005-110 on December 6, 2005, "Initiating Proceedings to Adopt Revised Condominium Regulations Including Those at Fremont Municipal Code Sections 8-22135 through 8-22135.1 and 8-22171A."

In February 2006, the staff held community meetings to discuss the proposed Condominium Conversion Ordinance revisions and solicit input. (See *Public Notice and Comment* section below). Since this time, staff has received one formal application for an eleven unit conversion project as well as one formal preliminary review application for a five unit conversion. There have also been several inquiries regarding conversion prospects within the City.

On June 8, 2006, the Planning Commission held a public hearing and received testimony regarding the proposed ordinance and continued the item to July 27, 2006 to allow for additional research and recommendations by staff. Subsequently, staff also received comments and suggestions for consideration. The **Public Comment** section for this report summarizes the comments and suggestions along with staff recommendations.

This report and the proposed ordinance revisions pertain to residential condominium conversion projects and do not include revisions to the City's commercial condominium conversion ordinance.

## **PROJECT DESCRIPTION:**

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The Planning and Housing Divisions of the Community Development Department are proposing revisions to the Condominium Conversion and Inclusionary Housing Ordinances to 1) update and clarify provisions, 2) substitute a "cap" on the number of units that may be converted in lieu of a minimum vacancy rate, 3) set forth renter protections and benefits, 4) clarify and establish site and building upgrades to be required during a condominium conversion project and 5) set forth the applicability of the City's Inclusionary Housing Ordinance to condominium conversion projects.

The proposed new ordinance includes the following sections directly related the Condominium Conversion Ordinance:

- (a) "Residential Condominium Conversion Project," defined
- (b) Findings; Purpose
- (c) Applicability, exemptions
- (d) Conditional Use Permit required
- (e) Applications
- (f) Requirements
- (g) Conversion Cap and Unit Allocation Process
- (h) Findings for Use Permit

In addition, the proposed ordinance includes changes to the City's Inclusionary Housing Ordinance to confirm applicability of the inclusionary ordinance and clarify other language.

The following sections highlight the proposed changes within each section of the Condominium Conversion Ordinance:

The "*Findings; Purpose*" section has been expanded to set forth the reasons and basis for the ordinance.

The “*Applicability, exemptions*” section has been amended to clarify that the provisions of the ordinance apply to residential conversion projects of three or more units. This section also clarifies that projects that were previously subdivided and that have original California Department of Real Estate approval are not subject to this ordinance.

The “*Conditional Use Permit required*” section identifies the specialized requirements for obtaining a Conditional Use Permit. Conditional Use Permits for conversion projects have different submittal requirements than typical Conditional Use Permits. In addition, this section identifies the need for both a tentative and final subdivision map (noting that any Conditional Use Permit will expire concurrent with the tentative map expiration). Finally, this section sets forth the requirement for an agreement relating to inclusionary units and provisions for modifications or exemptions to certain requirements of conversion projects.

The “*Applications*” section of the ordinance describes the general application submittal requirements for residential conversion projects including an inspection document, a statement of proposed repairs, site and floor plans, development statistics, title report and a written statement as to how the project proposes to address the requirements of the Ordinance.

The “*Requirements*” section (section f) has been rewritten and sets forth the items that all conversion projects must achieve (absent modification or exemption). Highlights of the changes in this section are listed corresponding to the sub-item number of the draft ordinance.

- ◆ Item (2): Requires condominium conversion projects to provide Inclusionary housing at the same rates and types as currently required under the Citywide Inclusionary Ordinance. The inclusionary ownership requirement provides that 15% of the units (in projects of seven or more units) are to be made available under agreement with the City for qualifying households earning up to 110% of the median county income.
- ◆ Item (3): Clarifies the standards for evaluating noise and vibration requirements and the standards to which a project must be designed.
- ◆ Item (4): Clarifies that separate gas and electric metering is required. Also sets forth that separate water metering is required and that each unit must have a water shut-off valve.
- ◆ Item (8): Sets forth a requirement for laundry facilities, if not provided within each unit.
- ◆ Item (10): Establishes which common area improvements need to be evaluated and repaired or replaced to ensure a maintenance-free period of at least ten years.
- ◆ Item (11): Clarifies that electrical systems shall be grounded and that electrical reception protection (Ground Fault Circuit Interrupter – GFCI) shall be provided.
- ◆ Item (14) Establishes structural retrofit for “soft story” buildings to reduce earthquake hazards
- ◆ Item (15): Establishes a requirement for a minimum one-year warranty for appliances and other mechanical systems in the project.
- ◆ Item (17): Establishes tenants’ notices and rights including: 1) relocation assistance in the form of information and subsidies, 2) a 5% purchase price discount (may result in reduced interior cosmetic improvements – all safety improvements must be made) 3) and five year lease/increased relocation assistance opportunities for senior tenants who have resided for two or more years in good standing.

The “*Conversion Cap and Unit Allocation Process*” section has been crafted to eliminate the minimum vacancy rate requirement (currently 3% or greater<sup>1</sup>) and sets forth an annual cap of 100 units. This section also specifies how the allocation process will work. The reason staff is recommending that the annual conversion allowance be set at 100 units is because it represents the average number of new rental units added to Fremont housing stock annually over the past six years. The cap will provide certainty to potential applicants as well as administrative efficiencies, and will serve the goal of maintaining an adequate supply of rental stock in the City. Unused allocations from the prior year may be used in the next calendar year if the vacancy rate is above 5 percent.

The “*Findings for Use Permit*” section has been rewritten to specify the particular findings required for condominium conversion projects.

The following sections highlight the proposed changes within each section of the Inclusionary Housing Ordinance:

- ◆ The “Residential project” definition is being amended to clarify that a Condominium Conversion is a residential project.
- ◆ The “Pending Project” definition is being eliminated as it is no longer necessary.
- ◆ Various sections are amended to reflect that the “Community Development Director or designee”, rather than the “City Manager or designee” will be responsible for administering the requirements and provisions of the ordinance.

## **PROJECT ANALYSIS:**

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### ***General Plan Conformance:***

Goal H-2      HIGH QUALITY AND WELL-DESIGNED NEW HOUSING OF ALL TYPES  
THROUGHOUT THE CITY

Policy 2A.      The City shall continue to apply building codes and design standards to ensure that development is of high quality and consistent with the scale and character of the community.

Implementation:    The City will continue to enforce and update its codes and standards for all residential development activities.

*Analysis:*      *The proposed condominium conversion ordinance update fosters this goal by ensuring that conversion projects are of high quality and meet basic health and safety requirements so as to protect the general welfare of those future owners.*

Goal H-3      HOUSING AFFORDABLE AND APPROPRIATE FOR A VARIETY OF FREMONT  
HOUSEHOLDS AT ALL ECONOMIC LEVELS THROUGHOUT THE CITY

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<sup>1</sup> The vacancy rate is currently 3.6% (First quarter of 2006).

Policy 3A. Adopt appropriate land use regulations and other development tools to encourage development of affordable housing.

Implementation: Develop and implement an Inclusionary Housing Program.

*Analysis: Condominium conversion projects provide additional housing ownership opportunities which typically, are at prices lower than new construction. In addition, the requirement for inclusionary housing within conversion projects helps strengthen achievement of this goal.*

***Analysis of proposed Ordinance:***

The following analysis is provided for the major changes proposed in the new ordinance.

*Inclusionary requirement.* The current proposal provides that conversion projects be subject to the requirements of the City's Inclusionary Housing Ordinance. This ordinance generally requires that 15% of the units within a project be made available to moderate income households earning up to 110% of the county median income. City staff considered alternative options including: 1) a requirement for a higher percentage of affordable units, 2) a different affordability target (low income versus moderate income, and 3) a shorter term of affordability (less than 30 years, renewable) in consideration of the fact that the units are not newly constructed. In the end, staff found that while these and other options may be viable, they would require subsequent studies and evaluation. In addition, staff believes that utilizing the same requirements of the current inclusionary ordinance makes possible a clear understanding by applicants as well as a streamlined review process.

*Renter Protection and Relocation Assistance:* These provisions are generally new to the ordinance and are a general reflection of current practices in most new conversion ordinances. While many requirements are set forth in state law, the City's ordinance extends additional benefits to tenants who become owners (e.g. 5% purchase price discount) as well as seniors (62 or older) residing on the property for two or more years. The ordinance proposes that these seniors may continue to live in their unit as a rental property for up to five years but may also elect a larger relocation subsidy in lieu. In addition, tenants who must find new housing are offered additional assistance with relocation efforts including information to tenants on available rental housing in Fremont and nearby cities if not available in Fremont and three months rent as a assistance payment. Seniors are eligible for a five year lease or five months rent as an assistance payment. The rental assistance payment would diminish by one month's payment for each year they choose to extend their lease up to five years.

*Clarified Requirements and Standards:* This section has been completely rewritten to provide additional clarity in the conversion review process. Requirements have been set forth and evaluation standards have been described in an attempt to more clearly set forth the City's expectations. In general, the City staff finds that converted units should meet a standard of good repair and should not pose an unexpected burden on future homeowners. The proposed ordinance includes provisions for improvements that deal with basic safety issues as well as amenities. For example, the staff is recommending that building safety upgrades be put in place prior to conversion should a development not meet current standards of safety. These are not typically simple or inexpensive requirements to implement, however, once a building or group of buildings have been converted and sold, subsequent owners are not likely to be able

to make such improvements. These are important improvements that would meet more recent codes for health and safety. They are also improvements that are difficult to coordinate amongst multiple owners. By requiring these improvements, future owners would not inherit these problems and the associated expenses.

*Conversion Cap versus Vacancy Rate:* The proposed ordinance establishes a conversion cap of 100 units per calendar year and eliminates the minimum vacancy rate of 3%. The conversion cap was established based upon the average number of newly constructed rental units within the City of Fremont over the past six years. The cap assures that the City does not lose its rental housing stock which is important to long term economic stability but does provide new ownership opportunities for many households. In addition, when projects compete for an allocation, the process provides priority for projects that provide improved affordability levels (above the basic inclusionary requirements); followed by projects that meet requirements without exceptions; followed by projects that provide other benefits to the neighborhood or community.

***Environmental Review:***

A Negative Declaration has been prepared and circulated for this project. The environmental analysis concluded that the proposed Condominium Conversion Ordinance would not conflict with the General Plan and that the proposed ordinance itself will not create a significant effect on the environment. It is also noted, that subsequent conversion projects will be subject to their own environmental review to determine if any site specific improvements will cause an impact on the environment. Staff recommends that the Planning Commission recommend to the City Council adoption of a Negative Declaration for this project.

**PUBLIC NOTICE AND COMMENT:**

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Public hearing notification is applicable. A total of 1,266 notices were mailed to interested parties. Staff mailed the notices to owners and occupants on April 28, 2006. The Argus published a Public Hearing Notice on April 27, 2006. The hearing was continued to June 8, 2006 to allow for additional refinement of the ordinance. After the Public Hearing on June, 8, 2006, the Planning Commission continued the hearing to July 27, 2006 for further review.

On February 1 and 2, 2006, the City staff held two community meetings with both owners and interested parties to solicit input on the City's proposal to amend the Condominium Conversion ordinance. In general, there was support for the proposal and, in particular, the concept of a cap versus a threshold vacancy rate. One owner suggested the City use a merit-based system to award unit allocations should there be competition for allocations. There were also concerns over how larger projects (over 100 units) would be phased over several years. Both of these issues are addressed in the "*Conversion Cap and Unit Allocation Process*" section of the ordinance.

Subsequent public hearings and public comments have raised a few additional issues. These issues are addressed in the order they appear within the revised draft ordinance:

1. The City should consider making existing subdivided projects which have been rented for the past five years or more subject to the City's Conversion Ordinance.

*Staff response: If a project already has a recorded final map and valid, current approval from the Department of Real Estate, the City does not have jurisdiction to modify those approvals. There are existing provisions in State laws that provide some tenant notification in such circumstances. In addition, the subdivider or owner is required to comply with standard disclosure laws before selling units.*

2. In the *Applications* section (d)(4), it is unclear as to what standard or standards the inspection document is to be prepared.

*Staff response: The draft ordinance has been revised to specify that the current building, housing and fire codes are to be used unless otherwise specified in the Requirements section (f).*

3. In the *Requirements* section, under repairs and restoration (9), the 5-year term should be increased as it is too short.

*Staff response: Staff concurs and has revised the ordinance to increase the term to 10 years.*

4. Can the 5% discount rate for tenants who chose to purchase result in “less of an upgrade” for those units?

*Staff response: As currently written, the ordinance allows for some variation to level of improvement within the interior of units excepting that all building and fire safety requirements as well as, noise and vibration are addressed.*

5. Can students displaced by conversion continue to go to the same Fremont Unified School for the remainder of the school year and/or term at the school?

*Staff response: The Fremont Unified School District staff noted that there are different answers to this question depending on a number of circumstances. Basically a student is supposed to register for and attend the school with in the attendance boundary they live in or move in to. A High School Junior who moves into a new attendance area can invoke a "Senior Privilege" for their senior year and remain at the High School they are attending. Students at all other grade levels would have to enroll in the new school in the new attendance area they move into unless their old school was not at capacity nor on a moratorium and they completed a transfer form that was approved. There are also a variety of waivers that could come into play depending on the situation.*

6. The City should consider requiring two or three year's tenancy in good standing prior to requiring the five percent discount towards the purchase price for tenants in good standing.

*Staff response: While the primary purpose of this provision is to minimize disruption to tenants and to encourage homeownership opportunities, staff has modified the draft ordinance to require that a tenant must have two years residency in good standing prior to be eligible for the discount price.*

7. Can the requirement for a lifetime lease for seniors be replaced with some other benefit package?

*Staff response: The lifetime lease provision appears to be a relatively standard provision in the City's survey of newer Condominium Conversion Ordinances. After evaluating the proposal further, staff is recommending that the lifetime lease provision be deleted in favor of an enhanced relocation assistance package. The assistance package proposes that seniors (62 years or older – the Social Security eligibility age and the age most benefits become available to seniors) be offered either five months rent or a one to five year lease at the discretion of the senior. For each year the senior elects to exercise their option to lease, the financial relocation assistance offered by the owner may be reduced by one months rent. This proposal would offer the greatest financial incentive for those seniors that moved out early but would allow them to continue leasing for up to five years, recognizing the potential for diminishing financial assistance.*

8. The *Relocation Subsidy* in the *Requirements* section (14)(ii) is too low. This does not even provide enough for a tenant to pay first month's rent, last month's rent and a security deposit let alone moving costs. Most cities require at least three months rent.

*Staff response: Based upon a review of other cities, staff has revised the ordinance to include a subsidy of three month's rent.*

9. The statement of availability of conversion allocations should be moved up to the first week of January to allow more time for applicants to complete their application.

*Staff response: The draft ordinance has been modified to reflect this.*

10. The City should not prohibit use of unused allocations from prior years but could consider limiting the percentage of unused allocations that would be allowed to be used. Conversely, the City should reduce the cap from 100 units to a lower number, perhaps 50. Alternatively, the City should consider granting allocations based upon vacancy rates or consider basing the number of available allocations on the number of apartment/rental permits issued in the prior year.

*Staff response: Finding balance is an important factor. The currently proposed cap is based upon an average of the past six years of rental development within the City. Staff believes that the cap combined with a vacancy rate consideration for use of any unused allocations from the prior year will provide an appropriate balance for future conversion allocations. At any point in time, staff, Planning Commission or City Council could request reconsideration of the Conversion Cap and allocation process.*

**Enclosures:**

Exhibit "A" Negative Declaration  
Exhibit "B" Zoning Text Amendment



***Informational:***

1. Initial Study
2. Existing Condominium Conversion Ordinance
3. Existing Inclusionary Housing Ordinance
4. Correspondence
5. Planning Commission Minutes from June 8, 2006
6. City Council Resolution 2005-110

**RECOMMENDATIONS:**

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1. Hold public hearing.
2. Recommend the initial study has evaluated the potential for this project to cause an adverse effect, either individually or cumulatively, on wildlife resources. There is no evidence the proposed project would have any potential for adverse effect on wildlife resources.
3. Recommend the City Council approve a Negative Declaration and recommend the use of a Certificate of Fee Exemption and find these actions reflect the independent judgment of the City of Fremont.
4. Find PLN2005-00312 (A Zoning Text Amendment) is in conformance with the relevant provisions contained in the City's General Plan. These provisions include the designations, goals and policies set forth in the General Plan's Housing Chapter as enumerated within the staff report.

Find the public necessity, convenience, and general welfare require the adoption of this Zoning Text Amendment because the City wants to assure that:

- (a) Residential condominium conversion projects are consistent with the housing element of the general plan and with state law, and that the availability of rental units is generally maintained;
  - (b) Residential condominium conversion projects meet certain physical and visual standards, and that purchasers of dwelling units in conversion projects are informed as to the physical conditions of the structure and on-site facilities;
  - (c) A homeowners' association is established to ensure a mechanism for funding the maintenance and replacement of all structural and operational components of the structures, common spaces and facilities, consistent with state law; and
  - (d) In accordance with Government Code Section 66427.1, tenants have been provided with adequate notice of the conversion, information relating to relocation, and the opportunity to purchase the residential unit being converted, as well as relocation benefits.
5. Recommend PLN2005-00312 to the City Council in conformance with Exhibit "B" (Zoning Text Amendment) and forward specific recommendations, if any.

**DRAFT****ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FREMONT  
AMENDING FREMONT MUNICIPAL CODE SECTIONS 8-22135, 8-22171, 8-22173,  
8-22174, 8-22175, 8-22176 AND 8-22177, ADDING SECTION 8-22170(H), AND  
DELETING SECTIONS 8-22135.05 AND 8-22171(M), ALL RELATED TO  
RESIDENTIAL CONDOMINIUM CONVERSIONS**

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WHEREAS, for the past few years cities and counties throughout the State of California, including the City of Fremont ("City"), have been experiencing a surge in residential condominium conversion applications; and

WHEREAS, condominium conversions have both advantages and disadvantages: they provide entry level housing opportunities for first time homebuyers and assist redevelopment of declining neighborhoods, while at the same time displace long-time tenants and drive up housing and land costs; and

WHEREAS, the City's general plan encourages the development of home ownership opportunities but also describes the need for the City to provide diverse housing stock affordable and appropriate for a variety of Fremont residents at all economic levels; and

WHEREAS, the City has an interest in ensuring that all conversions of rental units to ownership units are accomplished in such a manner as to protect the safety and investment of those persons purchasing the ownership units as well to protect and minimize impacts on existing rental tenants; and

WHEREAS, the City Council of the City of Fremont adopted Resolution No. 2005-110 on December 6, 2005, stating its intention to study and revise its existing condominium conversion regulations to ensure that the City is considering and protecting all interests related to conversions in the most effective manner possible; and

WHEREAS, the City finds, among other things, that the conversion process which divides the ownership interest in a building and property into multiple fractions will make redevelopment of buildings less likely and have the effect of extending and prolonging the use of older buildings, and that it is therefore critical the City review the physical condition of properties prior to conversion to ensure that they are structurally sound and brought into compliance, to the extent possible, with current building code standards and regulations; and

WHEREAS, because it is generally acknowledged that California, including the City of Fremont, will experience moderate to severe earthquakes in the foreseeable future, the City supports and encourages increased efforts to reduce earthquake hazards. The City finds that "soft story" residential buildings, as defined in Section 7-10115 of the Fremont Municipal Code, pose

a particular seismic hazard to residents, and adopts by reference and incorporates herein the findings set forth in California Health and Safety Code Section 19160 pertaining to soft story residential structures. Because the conversion process will prolong the life of soft story residential structures, the City finds it necessary to impose certain safety related building regulations upon such; and

WHEREAS, the Planning Commission held two public hearings, June 8 and July 27, 2006, to review and consider this ordinance and make recommendations to the City Council.

NOW THEREFORE, the City Council of the City of Fremont does ordain as follows:

**Section 1.** Fremont Municipal Code Section 8-22135, "Condominium, community apartment, stock cooperative and townhouse conversion projects," is repealed and reenacted to read in its entirety as follows:

**Sec. 8-22135. Condominium conversion; residential projects.**

(a) "Residential Condominium Conversion Project" defined. As used in this section, a "Residential Condominium Conversion Project" consists of the conversion of dwelling units on a single lot to a condominium, community apartment, townhouse or stock cooperative form of ownership.

(b) Findings; Purpose.

Cities and counties throughout California are experiencing an increase in residential condominium conversion applications. This chapter is enacted to revise the City's existing requirements and procedures for the control and approval of conversion of existing multiple-family residential housing to residential condominium projects. By their unique character and requirements, conversions differ specifically from other subdivisions. On the one hand, conversions may support the City's policy to encourage home ownership opportunities. On the other hand, conversions may have significant social, economic, and safety impacts. Conversions may affect the balance between rental and ownership housing within the City, and thereby reduce the variety of individual choices of tenure, type, price and location of housing; increase overall rents; decrease the supply of rental housing for all income groups, and displace individuals and families. In addition, conversion to multiple ownership prolongs the life of a building thereby increasing the need that it be brought into conformance with current building and safety codes.

This section is enacted to ensure that:

- (1) Residential condominium conversion projects are consistent with the housing element of the general plan and with state law;
- (2) The availability of rental units is generally maintained;
- (3) Residential condominium conversion projects meet certain physical and visual standards to ensure the public health, safety and welfare, and that purchasers of

dwelling units in conversion projects are informed as to the physical conditions of the structure and on-site facilities;

- (4) A homeowners' association is established to ensure a mechanism for funding the maintenance and replacement of all structural and operational components of the condominium project, including the structures, common spaces and facilities; and
- (5) Consistent with the Subdivision Map Act, tenants have been provided with adequate notice of the conversion, information relating to relocation, relocation benefits, and the opportunity to purchase the residential unit being converted.

(c) **Applicability, exemptions.** This section applies to residential condominium conversion projects creating three or more units. Residential condominium conversion projects which have a recorded final condominium map and which have a current, valid California Department of Real Estate public report approval are exempt from the provisions of this Section, but shall not otherwise be exempt from the provisions of the Code.

(d) **Conditional use permit required.**

- (1) No person shall undertake a residential condominium conversion project without first obtaining a conditional use permit, as provided pursuant to Article 25, from the Planning Commission, or upon referral, the City Council. However, the application requirements set forth in subsection (e), below, are in place of the requirements of Article 25.
- (2) Unless otherwise exempt, a tentative and final tract map shall be required for all condominium conversion projects creating three or more condominiums as defined in Section 783 of the California Civil Code, a community apartment project containing three or more parcels, or for the conversion of a dwelling to a stock cooperative containing three or more dwelling units.
- (3) In addition to other conditions, a use permit shall require the recordation of an agreement, in a form approved by the City, related to inclusionary units as required by subsection (f)(2), below.
- (4) The approving authority may not waive or modify a requirement of subsection (f), below, unless it finds, by substantial evidence, all of the following: that the modification or waiver will not be materially detrimental to the proposed residents of the property or to residents of surrounding properties, or to the public health or safety, and that the modification or waiver helps implement the goals of the housing element.
- (5) In Planned District (P) zones, the planned district minor amendment process may not be used for the purpose of varying from the requirements as set forth in subsection (f). A Planned District Minor Amendment may be required in addition

to a Conditional Use Permit in such zones to address varying setback standards attributable to a condominium subdivision.

- (6) For a condominium conversion project for which a tentative map has been approved, but for which a final map has not been recorded, a conditional use permit for such condominium conversion shall expire concurrently with the expiration of the tentative map.
- (e) Applications. Each application for a condominium conversion shall include the following:
- (1) Accurately dimensioned site plans showing the property lines, existing topography of the site, and the location of all existing easements, structures, setbacks, parking, trash enclosures, fences and other improvements. A California-licensed engineer and/or land surveyor must prepare such site plans.
  - (2) A list showing the percentages of open space, building coverage, parking and circulation areas. Parking information shall include the total number of parking spaces, covered and uncovered spaces, compact spaces, guest spaces and accessible parking spaces.
  - (3) Scaled development plans showing typical floor plans and building elevations. A California-licensed architect must prepare such plans.
  - (4) An inspection document, prepared by a licensed professional, evaluating the physical conditions of the development (including residential units and common areas) such as the foundation, wall sections, pest damages and sound insulation, and including any deficiencies or deviations from conformance with current applicable codes in electrical, plumbing, structural integrity, smoke detectors, mechanical equipment (including but not limited to heating and air conditioning and elevators), and security regulation standards. This document shall include a statement regarding remaining years of viable use for such items, including but not limited to the roofing system and mechanical equipment.
  - (5) A statement of repairs, improvements and architectural changes the applicant intends to make before conveyance of the units, and plans showing all of such.
  - (6) The proposed organizational documents. In addition to such covenants, conditions and restrictions that may be required by the Department of Real Estate of the State of California pursuant to Title 6 (Condominiums) of the Civil Code, or other state laws or policies, the organizational documents shall provide for the following:
    - a. Conveyance of units;
    - b. Assignment of parking and management of common areas within the Project;

- c. A proposed annual operating budget containing a reserve fund to pay major anticipated maintenance, repair, or replacement expenses; and indicating the association fees needed for the operating budget and the reserve fund;
  - d. A pro forma balance sheet of the association;
  - e. A provision that the annual assessments to members of the association shall provide for penalties for late payments and reasonable attorneys fees and costs in the event of default by members;
  - f. Provisions to allow the association to terminate the contract of any person or organization engaged by the developer to perform management or maintenance duties after the association assumes control of the project or anytime thereafter.
- (7) A detailed written statement that explains how the conversion project proposes to address each of the items listed in subsection (f) below.
  - (8) Two copies of a current preliminary title report.
  - (9) Any other information deemed necessary by the Planning Director.
- (f) Requirements. Residential condominium conversion projects shall conform to applicable standards and requirements of local and state codes, the Subdivision Map Act, and the following:
- (1) Zoning and General Plan. The residential use and density shall be consistent with the general plan land use designation and zoning district in which the project is located. If project density, taking into account an allowance for prior project dedications, exceeds the currently allowable density, prior dedications of land for public rights-of-way may be included in site area to determine density.
  - (2) Inclusionary housing. A residential condominium conversion with seven or more residential units is subject to the inclusionary housing requirements of Article 21.7.
  - (3) Noise and vibration. The interior and exterior sound transmission standards shall be those in effect at the time of conditional use permit approval, pursuant to California Code of Regulations Title 24, Part 2, California Building Code Appendix, Chapter 12, Division IIA, "Sound Transmission Control," and City Subdivision Ordinance, Title VIII, Chapter 1, Article 5. All mechanical equipment, including appliances, which are a source of vibration or noise, shall be shock-mounted and isolated from the floor and ceiling to minimize the transmission of vibration and noise.
  - (4) Utilities.
    - a. Each dwelling unit shall have separate gas and electric metering. Each unit shall have its own panel board for all electrical circuits which serve the unit.

- b. Each dwelling unit shall have separate water service metering. A water shut-off valve shall be provided for each unit or for each plumbing fixture.
- (5) Trash enclosures. Trash enclosures shall be provided in accordance with FMC Section 8-22155.
- (6) Parking. The project must comply with the off-street parking and loading requirements of Article 20, and with City standards for private streets.
- (7) Storage space. The project must include at least 100 cubic feet of storage space for each residential unit (excluding interior closet space). Storage space shall be waterproof and lockable and may be located in such areas as garages, carports, enclosed balcony closet areas, or commonly owned and accessible storage areas.
- (8) Laundry facilities. Laundry facilities shall be provided in each unit, or, if common laundry areas are provided, such facilities shall consist of not less than one automatic washer and dryer for each five (5) units or fraction thereof.
- (6) Smoke alarms. Smoke alarms shall be installed in individual units and in common hallways, subject to approval by the building and safety division. Smoke alarms shall be interconnected and shall receive their primary power from the building wiring and shall be equipped with a battery backup.
- (10) Repairs and restoration. All exterior common areas shall be refurbished to a condition reasonably acceptable to the Community Development Director or designee. “Reasonably acceptable” shall mean that the following items shall be functional for their purpose and be repaired and/or replaced to ensure a relatively maintenance-free period of at least ten years from the date of conditional use permit approval:
  - a. Vehicular and pedestrian ways, including cracked, uplifted, depressed or otherwise damaged or dilapidated pavement sections.
  - b. Landscaping, including but not limited to plant materials, irrigation systems, fencing, benches, play equipment, arbors, trellises, fountains, and similar features.
  - c. Utility services, including but not limited to water, sanitary sewer, storm drainage, gas, electric, and cable or satellite facilities and their appurtenant meter boxes, vaults and screening devices.
  - d. Accessory structures, including but not limited to trash enclosures, storage buildings, pools, and equipment enclosures.
  - e. Roofing systems and building exteriors including but not limited to roofing and siding materials, glazing, and chimneys.

(11) Electrical. Electrical system grounding and equipment grounding shall be provided and electrical receptacle protection shall be upgraded to include ground fault circuit interrupter (GFCI) protection. GFCI protection shall comply with the prevailing code requirements.

(12) Security. The condominium project shall be modified to comply with the building security regulations set forth in the Chapter 2 of Title VII this Code.

(13) Structural Standards and Automatic Fire Extinguishing Systems (AFES). All condominium conversion residential projects shall be evaluated for compliance with current building and fire codes and local ordinances. The City strongly encourages that compliance be achieved as part of the project. If the applicant declines to make such improvements, the applicant shall fully disclose to potential buyers the lack of such improvements on a form and in a manner reasonably acceptable to the City.

(14) Earthquake hazard reduction requirements in existing wood frame residential buildings with soft, weak or open-front walls. All “soft story” residential buildings, as defined in Section 7-10115 of this Code, must comply with the provisions and retrofit standards set forth in Chapter 10, Earthquake Hazard Reduction Requirements in Existing Wood Frame Residential Buildings with Soft, Weak or Open-Front Walls, Sections 7-10100 et seq., except that Sections 7-10125 through 7-10150 of Chapter 10 do not apply to residential condominium conversions. In addition, Section 7-10180 does not apply to residential condominium conversions.

(15) Warranties. The project owner shall provide to each buyer, or to the homeowners’ association, as applicable, a one-year warranty on all of the following: appliances in each unit or other common area facility, electrical and plumbing, ventilation equipment, heating and air conditioning systems, and elevator(s) as applicable to the development.

(16) Homeowners’ association.

- a. A homeowners' association shall be established in recorded Conditions, Covenants and Restrictions (“CC&Rs”). Such association shall be responsible for all common areas, including but not limited to landscaping, trash enclosures, plumbing, smoke alarms, electrical wiring, utility charges and building exteriors. The applicant shall provide an initial reserve fund for the association equal to three (3) years annual maintenance costs. The annual maintenance costs shall be as determined by the State Department of Real Estate regulations.
- b. For any project consisting of twenty or more dwelling units, the association shall be required to contract with a professional management firm to handle management operations and collection procedures. A professional management firm means a business entity that is licensed or otherwise accredited consistent with State law as a property management



organization or an individual who is certified in managing a condominium or other project within the scope of this section.

(17) Tenants’ notices and rights; Relocation.

- a. Tenants’ notices and rights. The applicant shall give tenants and prospective tenants written notice of the intention to convert to condominiums as required by State law (Government Code Section 66427.1). In addition to offering tenants the right of first refusal to purchase, as required by State law, the applicant shall also:
  - i. Refrain from any rent increases during the 180-day notice period required by State law before termination of tenancy.
  - ii. Offer a five percent purchase price discount to any tenant who has resided in the unit for two years or more in good standing. Fewer cosmetic upgrades to the interior of units may be credited towards the purchase price discount, but in no case may common area facilities or health, safety, noise or vibration standards be compromised. The City will provide a home ownership education program for those tenants who elect to contract for purchase.
- b. Relocation assistance.
  - i. Information to tenants. The applicant shall provide relocation information to tenants, updated monthly, consisting of data indicating the current and continually available, competitively priced, decent, safe and sanitary dwelling units the City of Fremont. Should insufficient supply exist in Fremont, then information shall be provided for adjacent or nearby cities.
  - ii. Relocation subsidy. The applicant shall provide financial relocation assistance to each tenant who has resided in a unit for one year or more in good standing, limited to one assistance payment per unit. An assistance payment shall equal three times the current monthly rent. This assistance cannot include the first or last months’ rent or cleaning or security deposit. The assistance is due to the tenant within five days after the tenant vacates the unit, or sooner if agreed in writing by both parties.
  - iii. Special Relocation subsidy for senior tenants (62 years or older). When a senior tenant has resided in a unit for two or more years in good standing, the applicant shall offer the senior tenant the choice of either receiving (1) a relocation assistance payment equal to five times the current monthly rent, or (2) an extended lease for up to five additional years. If the senior tenant chooses to extend the

lease, the amount of relocation subsidy shall be reduced by one monthly payment for each year the lease is extended, so that if the senior tenant extends the lease for five years, he or she shall receive no relocation assistance payment at the end of such term. This assistance cannot include the first or last month's rent or cleaning or security deposit.

(g) Annual conversion cap and unit allocation process.

- (1) No more than one hundred (100) apartment units shall be approved for conversion in any calendar year, except the Planning Commission may assign unused allocations from the immediately prior year and may also borrow up to twenty (20) units in allocations from future years to a) facilitate completion of a project in one phase or one less phase than would otherwise be possible; or b) promote a higher degree of affordability than is required by the City's inclusionary housing ordinance. An unused allocation from a prior year may only be carried over and used during the next calendar year if, at that time, the apartment vacancy rate for the City is greater than 5%. If an allocation is not used in the next subsequent calendar year, it shall expire.
- (2) The Planning Division shall track both used and unused allocations. During the first week of the new calendar year, the Planning Director shall issue a statement as to the availability of residential condominium conversion allocations for the current calendar year as well as the four following calendar years. In addition, the Planning Director shall indicate the current apartment vacancy rate.
- (3) Applications for residential condominium conversion projects shall be accepted by the City between March 1 and March 15 of the current calendar year if unit allocations are available for the current year.
- (4) Projects with more than 100 units may request and be approved for phased final maps and annual allocations over one to five calendar years.
- (5) The Planning Commission may choose to allocate all or a part of a requested allocation. The Planning Commission may divide the available allocations between projects over a period not to exceed five years.
- (6) If more than one application is received, the Planning Commission shall prioritize those proposal(s) that provide the highest percentage of affordable units or the highest degree of affordability in excess of the applicable inclusionary requirement, e.g., more than the minimum 15% inclusionary requirement and/or affordability to low or very low income households.
- (7) If the Planning Commission has previously granted approval of conversion applications and has allocated conversion units for five calendar years into the

future, no further applications shall be accepted or considered until the next calendar year.

- g. Findings. The planning commission shall review the conditional use permit application for a residential condominium conversion and make all of the following findings before approving a project:
- (1) The conditional use permit findings required in section 8-22509(a), (e), (f) and (g) have been met;
  - (2) The requirements in section 8-22135(f) have been met or waivers or modifications have been authorized; and
  - (3) The total number of residential condominium unit conversions for the calendar year is consistent with the limitations set forth in section 8-22135(g).

Section 2. Fremont Municipal Code Section 8-22135.05, Condominium, community apartment, stock cooperative and townhouse projects; homeowner’s association requirements, is deleted in it’s entirety.

Section 3. Fremont Municipal Code Section 8-22170 subsection (h) is added to read as follows:

- (h) The limited production of rental housing and the displacement of rental housing units through conversions to ownership condominiums reduce the City’s rental housing supply which causes increased rental housing costs and decreased housing affordability. The provision of inclusionary units within condominium conversion projects represents housing ownership opportunities that help offset the loss of affordable rental units.

Section 4. Fremont Municipal Code Section 8-22171 (Definitions) Subsection (e) is amended to read as follows:

- (e) Construction cost index. The Engineering News Record San Francisco Building Cost Index. If that index ceases to exist, the Community Development Director shall substitute another construction cost index which in his or her judgment is as nearly equivalent to the original index as possible.

Section 5. Fremont Municipal Code Section 8-22171 (Definitions) Subsection (f) is amended to read as follows:

- (f) Consumer Price Index. The U.S. Department of Labor, Bureau of Labor Statistics Consumer Price Index for All Urban Consumers for the San Francisco-Oakland-San Jose Metropolitan Statistical Area or if that index is discontinued, a successor index selected by the Community Development Director.

Section 6. Fremont Municipal Code Section 8-22171 (Definitions) Subsection (m) (Pending Project) is deleted.

Section 7. Fremont Municipal Code Section 8-22171 (Definitions) Subsection (n) is amended to read as follows:

(m) Published standard. The standard for a specified income level for Alameda County, as published pursuant to California Code of Regulations, Title 25, Section 6932 (or its successor provision).

Section 8. Fremont Municipal Code Section 8-22171 (Definitions) Subsection (o) is amended to read as follows:

(n) Rental project. A residential project, or portion thereof, which is intended to be rented to tenants upon completion.

Section 9. Fremont Municipal Code Section 8-22171 (Definitions) Subsection (p) is amended to read as follows:

(o) Residential project. Any planned district, subdivision map, conditional use permit or other discretionary city land use approval which authorizes seven or more living units or residential lots, or living units and residential lots which total seven or more in combination. In order to prevent evasion of the provisions of this chapter, contemporaneous construction of seven or more living units on a lot, or on contiguous lots for which there is evidence of common ownership or control, even though not covered by the same city land use approval, shall also be considered a residential project. Construction shall be considered contemporaneous for all units which do not have completed final inspections for occupancy and which have outstanding, at any one time, any one or more of the following: planned district, subdivision map, conditional use permit or other discretionary city land use approvals, or building permits, or applications for such an approval or permits. A condominium conversion under section 8-22135 is considered a residential project and is subject to this chapter.

Section 10. Fremont Municipal Code Section 8-22173 (Incentives) Subsection (a) is repealed and reenacted to read as follows:

(a) Subject to approval of the Community Development Director or designee, for-sale affordable units may have different interior finishes and features than market rate units in the same residential project, so long as the finishes and features are durable, of good quality and consistent with contemporary standards for new housing, and be smaller in aggregate size than market rate units in the same residential project. Notwithstanding the above, all such units shall meet the criteria set forth in section 8-22175(c).

Section 11. Fremont Municipal Code Subsection 8-22174 (Time performance required) Subsection (a) is amended to read as follows:

(a) No building permit shall be issued for any market rate unit until the permittee has obtained permits for affordable units sufficient to meet the requirements of section 8-22172, or received certification from the Community Development Director or the

Director's designee that the permittee has met, or made arrangements satisfactory to the city to meet, an alternative requirement of section 8-22177. No final inspection for occupancy for any market rate unit shall be completed until the permittee has constructed the affordable units required by section 8-22172, or completed corresponding alternative performance under section 8-22177. The time requirements set forth in this subsection for issuance of building permits for market-rate units and for final inspections for occupancy for market-rate units may be modified to accommodate phasing schedules, model variations, or other factors in a residential project, if the city determines this will provide a greater public benefit and an inclusionary housing regulatory agreement acceptable to the Community Development Director or the Director's designee pursuant to section 8-22176 so provides.

Section 12. Fremont Municipal Code Section 8-22175 (Requirements for affordable units) Subsections (b) and (c) are amended to read as follows:

(b) The affordable units which are constructed in for-sale projects shall be sold at affordable housing cost for owner-occupancy to households whose income does not exceed one hundred and ten percent of area median income, adjusted for household size, or offered for rent pursuant to the terms of section 8-22177(a), provided that such units may be sold at affordable housing cost for owner-occupancy to households whose income does not exceed one hundred and twenty percent of area median income when the Community Development Director, or the Director's designee determines that is necessary to secure households able to qualify for mortgages to purchase the units.

(c) Subject to section 8-22177(a), affordable units shall be comparable in overall number of bedrooms, proportion of units in each bedroom category, quality of exterior appearance and overall quality of construction to market rate units in the same residential project. Overall unit size may be somewhat smaller but should be generally representative of the unit sizes within the market rate portion of the development and acceptable to the Community Development Director or designee. Interior features and finishes in affordable units shall be durable, of good quality and consistent with contemporary standards for new housing. Affordable units shall be dispersed throughout the residential project in a manner acceptable to the city.

Section 13. Fremont Municipal Code Section 8-22176 (Continued affordability; city review of occupancy) Subsections (a), (b) and (d) are amended to read as follows:

(a) Regulatory agreements acceptable to the Community Development Director or the Director's designee and, if the affordable units are designated for owner occupancy, resale restrictions, deeds of trust and/or other documents acceptable to the Community Development Director or the Director's designee, all consistent with the requirements of this chapter, shall be recorded against affordable owner occupied units and residential projects containing affordable rental units. These documents shall, in the case of affordable units which are initially rented, be for a term of ninety-nine years (or, if shorter, for so long as the project remains standing) and in the case of affordable units which are initially sold, be for a term of thirty years. In the case of affordable owner-

occupied units which are transferred during the required term, renewed restrictions shall be entered into on each change of ownership, with a thirty year renewal term. The forms of regulatory agreements, resale restrictions, deeds of trust and other documents authorized by this subsection, and any change in the form of any such document which materially alters any policy in the document, shall be approved by the Community Development Director or the Director's designee prior to being executed with respect to any residential project.

(b) In the case of units which are initially owner-occupied, the documents required by subsection (a) may not authorize subsequent rental occupancy on terms other than those provided in section 8-22175(a), except in hardship cases as provided in an inclusionary housing regulatory agreement acceptable to the Community Development Director or the Director's designee pursuant to section 8-22176. For rented affordable units, the documents required by subsection (a) shall provide for continued occupancy for limited periods by households occupying the units, whose incomes increase during their occupancy so that they exceed the maximum otherwise permitted for the unit.

Section 14. Fremont Municipal Code Section 8-22177 (Alternatives to on-site construction) Subsections (b), (c) and (d) are amended to read as follows:

(b) Off-site construction. Construct, or make possible construction by another developer of, units not physically contiguous to the market-rate units (or units that are physically contiguous to the market-rate units if the city determines this will provide greater public benefit and if an inclusionary housing regulatory agreement acceptable to the Community Development Director or the Director's designee pursuant to section 8-22176 so provides) and equal or greater in number to the number of affordable units required under section 8-22174. Off-site construction pursuant to this subsection shall be approved only if:

(1) Approval has been secured for the off-site units not later than the time the residential project is approved and completion of the off-site units is secured by a requirement that final inspections for occupancy for the related market-rate units be completed after those for the affordable units, provided that the time requirements set forth in this subsection for final inspections for occupancy for market-rate units may be modified to accommodate phasing schedules, model variations, financing requirements, or other factors in a residential project for the off-site units, if the city determines this will provide greater public benefit, and if an inclusionary housing regulatory agreement acceptable to the Community Development Director or the Director's designee pursuant to section 8-22176 so provides;

(2) The off-site units will be greater in number, larger or affordable to households with lower incomes than would otherwise be required in section 8-22172;

(3) Financing or a viable financing plan is in place for the off-site units; and

(4) In the event the off-site units receive any public assistance, the developer of the residential project will contribute to the off-site units’ economic value equivalent to the value of making on-site units in the developer’s residential project affordable. The city may require that completion of off-site units shall be further secured by the developer’s agreement to pay an in-lieu fee in the amount due under subsection (d) in the event the off-site units are not timely completed.

(c) Land dedication. Dedicate without cost to the city, a lot or lots within or contiguous to the residential project, sufficient to accommodate at least the required affordable units for the residential project. An election to dedicate land in lieu of compliance with other provisions of this chapter shall be allowed only if:

(1) The value of the lot or lots to be dedicated is sufficient to make development of the otherwise required affordable units economically feasible, and financing or a viable financing plan is in place for at least the required number of affordable units and;

(2) The lot or lots are suitable for construction of affordable housing at a feasible cost, served by utilities, streets and other infrastructure and there are no hazardous materials or other material constraints on development of affordable housing on the lot or lots.

(d) In-lieu fee. To the extent the residential project consists of for-sale units on lots whose average size is ten thousand square feet or more, on a site designated residential low density, residential very low density or open space by the general plan, pay an in lieu fee.

(1) Fees shall be paid upon issuance of building permits for market-rate units in a residential project. If building permits are issued for only part of a residential project, the fee amount shall be based only on the number of units then permitted.

(2) The initial fee schedule shall be set by the city fee resolution or other action of the city council so that the fee amounts are sufficient to make up the gap between: (i) the amount of development capital typically expected to be available based on the amount to be received by a developer or owner from affordable housing cost or affordable rent, and (ii) the anticipated cost of prototypical affordable units.

(3) The city council may annually review the fee authorized by this subsection (d) by resolution, and may, based on that review, adjust the fee amount. For any annual period during which the council does not review the fee authorized by this subsection, fee amounts shall be adjusted once by the Community Development Director or the Director’s designee based on the construction cost index. Where payment is delayed, in the event of default or for any other reason, the amount of the in-lieu fee payable under this subsection (d) shall be based upon the fee schedule in effect at the time the fee is paid.

(4) No final inspection for occupancy shall be completed for any corresponding market-rate unit in a residential project unless fees required pursuant to this chapter shall have been paid in full to the city.

Section 15. CEQA – NEGATIVE DECLARATION. The City Council hereby determines that the Negative Declaration prepared for this ordinance has been completed in compliance with the requirements of the California Environmental Quality Act (CEQA) and reflects the independent judgment of the City, and finds that adoption of the ordinance will have no significant negative impact on the area's resources, cumulative or otherwise. The Director of Community Development shall file a Notice of Determination with the County Clerk pursuant to CEQA guidelines.

Section 16. SEVERABILITY. In the event any court of competent jurisdiction holds any provision of this ordinance invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provisions hereof. The City Council hereby declares that it would have adopted this ordinance and each section, subsection, sentence, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, clauses, phrases or portions are declared invalid or unenforceable.

This ordinance shall be published once in *The Argus*, a newspaper of general circulation, printed and published in Alameda County and circulated in the City of Fremont, within fifteen (15) days from and after its adoption and shall take effect and be enforced thirty (30) days after its adoption.

The foregoing ordinance was duly introduced before the City Council of the City of Fremont, County of Alameda, at the meeting of the City Council of such City, held on the \_\_\_ day of September 2006, and finally adopted at a regular meeting of said Council held on the \_\_\_ day of \_\_\_\_ 2006, by the following vote, to wit:

AYES:

NOES:

ABSTAINED:

ABSENT:

\_\_\_\_\_  
Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
City Attorney